

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

RICHARD J. BAXTER,

Plaintiff,

vs.

DARREN BRYCE,

Defendant.

CV 13-00083-GF-DWM-RKS

ORDER DENYING PLAINTIFF'S MOTION
TO COMPEL

Plaintiff Richard Baxter has filed a Motion to Compel the production of documents requested on August 11, 2014. (Doc. 29.) Counsel for Defendant responded to the motion indicating the Requests for Production were overlooked due to "an interoffice error" and the documents would be produced by October 24, 2014. (Doc. 35.) Given that Defendant conceded his failure to timely respond to Mr. Baxter's discovery requests and is producing the documents, the motion to compel is moot.

Mr. Baxter also seeks \$175.00 in expenses. With regard to motions to compel the Federal Rules of Civil Procedure provide:

If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or

both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

- (I) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or
- (iii) other circumstances make an award of expenses unjust.

Fed.R.Civ.P. 37(a)(5)(A).

Rule 37 requires that each motion to compel "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Fed.R.Civ.P. 37(a)(1). The certification required under Rule 37 requires more than simply a statement of whether or not the opposing party objects as required by Local Rule 7.1. Rather, Rule 37 requires the party to confer or at least attempt to confer in good faith in an effort to avoid court action.

An award of expenses is inappropriate because Mr. Baxter failed to comply with Rule 37. He did not "attempt[] in good faith to obtain the disclosure or discovery without court action" before filing the motion or "include a certification that [he had] in good faith conferred or attempted to confer with [Defendant] in an effort to obtain [the disclosure or discovery] without court action." Fed.R.Civ.P. 37(a)(1), (5)(A); Doc. 35.

Accordingly, IT IS ORDERED that Mr. Baxter's Motion for an Order

Compelling Discovery is DENIED as MOOT.

DATED this 3rd day of November, 2014.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge